

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

FILED
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JAMES SEABA and
CORY PHILLIPS,

Plaintiffs,

v.

Civ. No. 02-103 LH/WWD

MESOSYSTEMS TECHNOLOGY, INC.,

Defendant.

MOTION TO MODIFY SUBPOENA

Defendant MesoSystems Technology, Inc. ("MesoSystems"), by and through its attorneys and pursuant to Fed.R.Civ.P. 45 respectfully requests this Court to issue an order modifying the Subpoena served on Dr. Charles Call by the Plaintiffs, James Seaba and Cory Phillips ("Plaintiffs"). As grounds for this Motion, MesoSystems states as follows:

1. Counsel for the parties agreed to schedule the deposition of Dr. Charles Call, a non-party in this cause, for February 28, 2003.
2. On or about January 24, 2003, Plaintiffs served a Subpoena on Dr. Call via U.S. Mail. Counsel for MesoSystems agreed to accept service of the Subpoena on Dr. Call's behalf.
3. On or about February 13, 2003, counsel for MesoSystems learned that a very important business commitment had come up which would take Dr. Call out of state from February 25 through February 28, 2003.

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4. Counsel for MesoSystems immediately notified opposing counsel that Dr. Call would be unable to attend his deposition on February 28, 2003 and offered alternative dates for the deposition. A true and correct copy of MesoSystems counsel's February 13, 2003 letter to Plaintiffs' counsel is attached hereto as Exhibit A.

5. On or about February 14, 2003, Plaintiff's counsel informed MesoSystems' counsel that Plaintiffs' counsel was unwilling to agree to rescheduling Dr. Call's deposition. A true and correct copy of Plaintiffs counsel's February 14, 2003 letter is attached hereto as Exhibit B.

6. Attending the deposition scheduled on February 28, 2003 would subject Dr. Call to undue burden and cause financial harm to MesoSystems. The business commitment interfering with his deposition relates to a large contract Dr. Call's business is closing with the U.S. Marines on a highly sensitive national security project.

7. A Notice of Non-Appearance is being subsequently filed herewith.

8. Counsel for Defendant MesoSystems requests that a hearing be set to hear the motion to modify subpoena.

WHEREFORE, Plaintiff MesoSystems hereby requests the Court to modify the subpoena served on Dr. Call so that his deposition can take place at a mutually convenient time and place for all parties.

Respectfully submitted,

BAUMAN, DOW, McINTOSH & LEÓN, P.C.

By: 

Alberto A. León

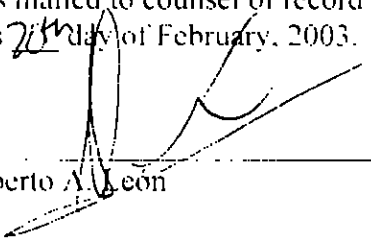
Attorneys for Defendant

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(505) 883-3191

I HEREBY CERTIFY that a true
And correct copy of the foregoing
was mailed to counsel of record
this 20th day of February, 2003.


Alberto A. León

1: Mesosystem Technology Plea and Motion to Modify Subpoena.doc